

Internal Revenue Service, Treasury

§ 31.3121(i)-1

transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.

(f) *Services described in section 3121(g)(5).* (1) Service not in the course of the employer's trade or business (see paragraph (a)(1) of § 31.3121(a)(7)-1) or domestic service in a private home of the employer (see paragraph (a)(2) of § 31.3121(a)(7)-1) constitutes agricultural labor if such service is performed on a farm operated for profit. The determination whether remuneration for any such service performed on a farm operated for profit constitutes wages is to be made under § 31.3121(a)(8)-1 rather than under § 31.3121(a)(7)-1. For provisions relating to the exception from employment provided with respect to any such service performed after 1960 by a father or mother in the employ of his or her son or daughter, see § 31.3121(b)(3)-1.

(2) Generally, a farm is not operated for profit if it is occupied by the employer primarily for residential purposes, or is used primarily for the pleasure of the employer or his family such as for the entertainment of guests or as a hobby of the employer or his family.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8315, July 2, 1964]

§ 31.3121(h)-1 American employer.

(a) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) an individual who is a resident of the United States, (3) a partnership, if two-thirds or more of the partners are residents of the United States, (4) a trust, if all of the trustees are residents of the United States, or (5) a corporation organized under the laws of the United States or of any State. For provisions relating to the terms

"State" and "United States", see § 31.3121(e)-1.

(b) For provisions relating to services performed outside the United States by a citizen of the United States as an employee for an American employer, see paragraph (c)(3) of § 31.3121(b)-3 and paragraph (e) of § 31.3121(b)(4)-1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8315, July 2, 1964]

§ 31.3121(i)-1 Computation to nearest dollar of cash remuneration for domestic service.

(a) An employer may, for purposes of the act, elect to compute to the nearest dollar any payment of cash remuneration for domestic service described in section 3121(a)(7)(B) (see § 31.3121(a)(7)-1) which is more or less than a whole-dollar amount. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to one dollar. For example, any amount actually paid between \$4.50 and \$5.49, inclusive, may be treated as \$5 for purposes of the taxes imposed by the act. If an employer elects this method of computation with respect to any payment of cash remuneration made in a calendar year for domestic service in his private home, he must use the same method in computing each payment of cash remuneration of more or less than a whole-dollar amount made to each of his employees in such calendar year for domestic service in his private home. Moreover, if an employer elects this method of computation with respect to payments of the prescribed character made in any calendar year, the amount of each payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of the act. Thus, the amount of cash payments so computed to the nearest dollar shall be used for purposes of determining whether such payments constitute wages; for purposes of applying the employee and employer tax rates to the wage payments; for purposes of any required record keeping; and for

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purposes of reporting and paying the employee tax and employer tax with respect to such wage payments.

(b) The provisions of this section apply to any cash payment for domestic service in a private home of the employer made on or after January 1, 1994. For rules applicable to any cash payment for domestic service in a private home of the employer made prior to January 1, 1994, *see* §31.3121(i)-1 in effect at such time (*see* 26 CFR part 31 contained in the edition of 26 CFR parts 30 to 39, revised as of April 1, 2006).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9266, 71 FR 35157, June 19, 2006]

§31.3121(i)-2 Computation of remuneration for service performed by an individual as a member of a uniformed service.

In the case of an individual performing service after December 31, 1956, as a member of a uniformed service (see section 31.3121(n)), to which the provisions of section 3121(m)(1) (see §31.3121(m)) are applicable, the term “wages” shall, subject to the provisions of section 3121(a)(1) (see §31.3121(a)-1), include as the individual’s remuneration for such service only his basic pay as described in section 102(10) of the Servicemen’s and Veterans’ Survivor Benefits Act (38 U.S.C. 401(1), 403; 72 Stat. 1126).

[T.D. 6744, 29 FR 8315, July 2, 1964]

§31.3121(i)-3 Computation of remuneration for service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

In the case of an individual performing service in his capacity as a volunteer or volunteer leader within the meaning of the Peace Corps Act (see section 31.3121(p)), the term “wages” shall, subject to the provisions of section 3121(a)(1) (see §31.3121(a)-1), include as such individual’s remuneration for such service only amounts paid pursuant to section 5(c) or section 6(1) of the Peace Corps Act (22 U.S.C. 2501; 75 Stat. 612).

[T.D. 6744, 29 FR 8315, July 2, 1964]

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§31.3121(i)-4 Computation of remuneration for service performed by certain members of religious orders.

In any case where an individual is a member of a religious order (as defined in section 3121(r)(2) and paragraph (b) of §31.3121(r)-1) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) and §31.3121(r)-1 is in effect with respect to such order or the autonomous subdivision thereof to which such member belongs, the term “wages” shall, subject to the provisions of section 3121(a)(1) (relating to definition of wages), include as such individual’s remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision or by any other person or organization pursuant to an agreement (whether written or oral) with such order or subdivision. Such other perquisites shall include any cash either paid by such order or subdivision or paid by another employer and not required by such order or subdivision to be remitted to it. For purposes of this section, perquisites shall be considered to be furnished over the period during which the member receives the benefit of them. (See example 4 of this section.) In no case shall the amount included as such individual’s remuneration under this paragraph be less than \$100 a month. All relevant facts and elements of value shall be considered in every case. Where the fair market value of any board, lodging, clothing, and other perquisites furnished to all members of an electing religious order or autonomous subdivision (or to all in a group of members) does not vary significantly, such order or subdivision may treat all of its members (or all in such group of members) as having a uniform wage. The provisions of this section may be illustrated by the following examples of the treatment of particular perquisites:

Example 1. M is a religious order which requires its members to take a vow of poverty and which has made an election under section 3121(r). Under section 3121(i)(4), M must include in the wages of its members the fair market value of the clothing it provides for